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In The

Supreme Court of the United States

October Term, 1949

No. 712

United States of America,
Petitioner,

v.

Lottie May Martin, James Martin, and
The Smoot Sand & Gravel Corporation

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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OPPOSING BRIEF OF RESPONDENTS

INTRODUCTORY

Some argument of the merits is made by petitioner and it is a temptation to respondents to answer all of it here. However, they will attempt to confine themselves to points which seem material to the question of whether the writ should be granted and its scope.

ADDITIONS TO PETITIONER'S STATEMENT

1. Section 2 of the Act of Cession of 1791 of the State of Maryland to the United States provided:

> "That nothing herein contained shall be so construed to vest in the United States any right of property in the soil as to affect the rights of individuals therein otherwise than the same shall or may be transferred by such individuals to the United States."
> (D. C. Code, 1940 Edition, p. XXIX)

2. The division of land in the Federal District was accomplished by conveying the land to trustees by deeds in trust to lay out the city, convey the streets to the Commissioners of Public Buildings and grounds and reconvey one-half of the quantity by allotment to the original proprietors (R 66-67 Pars. 9 b & c).

3. There is no dispute about the fact that the entire title to the lands involved in this action with all appurtenant rights vested in the Trustees under said deeds in trust and in said Commissioners for the division of the lots among the original proprietors (R 67 par. 10(a)).

4. It is also agreed by all parties that the lots in Square E of 664 were acquired with riparian rights (R 74, par 20(c), 80, par. I and 117, pars. 10 and I).

ARGUMENT

I.(a) The United States never acquired the land or rights of respondents. Inasmuch as it was agreed that title to all the lands in question vested in the Commissioners through the deeds in trust it cannot be disputed that the United States and the respondents are claiming through a common source of title.

(b) The government's claim that the Maryland Act of Cession gave title to the United States is clearly without foundation because of the provision of that Act quoted above.

In *United States* v. *Belt,* 79 U. S. App. 87 at pp. 92 and 93 the Court of Appeals said:—

> "If by this we are to understand that counsel mean that by cession from Maryland the United States acquired title to all the land embraced within the Cession, such a contention would be manifestly untenable, for it is specifically declared in the Act of Ratification that nothing therein contained shall be construed to vest in the United States any right of property in the soil or affect the rights of individuals therein otherwise than the same may be transferred by such individuals to the United States. If on the other hand, counsel mean only that as to the portion of the land below high water, the United States, under the cession from Maryland and by virtue of the powers surrendered by the States under the Constitution, may exercise their discretion in the use thereof in the public right of fishing, or in the promotion of commerce and navigation, there would be no dissent, for that principle is too firmly established to be questioned."

This opinion was by Chief Justice Groner, a recognized authority on riparian rights, who was recently appointed by this Court as special master in a case involving such rights.

(c) Consequently the United States never acquired the land or rights of respondents and the questions and arguments of petitioner in connection with the right to divest the United States of title are not in point.

II. (a) The common law of Maryland remained in force in the District of Columbia after the cession, D. C. Code (1940) T 49-301.

(b) The United States acquired all the streets and one-half of the land in the city by the deeds in trust mentioned above. The rights respondents acquired under those same deeds in trust in 1794 were vested at that time and could not subsequently be taken from them either morally or legally.

III. (a) The purely local question of whether or not South Capital Street acquired riparian rights in the division of the city in the 1790's was a question of fact. The District Court found as a fact that the founders of the city intended to lay out Square E of 664 in a manner which would preserve to the lot owners their riparian rights; that the founders also intended that the lot owners in that square should receive conveyances of new water lots with no street intervening between their lots and the channel; that South Capital Street terminated at the North line of S Street and did not bound the Square on the East, nor cut off any riparian rights of lot owners in the Square; and that these intents and purposes were carried out and no riparian rights became appurtenant to South Capital Street (R 115 & 116 Par. 7). This finding was amply supported by the evidence (Def's Exhibits 15, 16 & 35; R 191, 192, 207, 321-324 Vol. IV & brown envelope).

(b) This finding was also in accordance with law. *B&O RR* v. *Chase,* 43 Md. 23 arose as a controversy between two lot holders on Baltimore harbor where there was a turn leaving the water ends of the lots at right angles with each other. Since the access of each was inconsistent with the other, the question of which had riparian rights arose. The Court decided that the grantee who received the first patent from the State had the right of access.

CONCLUSION

It would be a waste of time to grant a writ to review the question of whether or not the United States can be *divested* of its title to the bed of the Rivers in the District of Columbia as this question is not involved. The same applies to the question of whether the United States acquired riparian rights with South Capital Street as that is a question of fact and not appealable. If any writ be granted upon this petition it should be only to review the

questions of whether or not the Courts below correctly construed the laws of Maryland and whether or not respondents riparian rights could be taken by the United States for public purposes without compensation.

Respectfully submitted,

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